



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2011-0640; FRL -9769-7]

Approval and Promulgation of State Implementation Plans: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to Idaho's State Implementation Plan (SIP) submitted by the Director of the Idaho Department of Environmental Quality (IDEQ) on July 13, 2011, for approval into the Idaho SIP. The submitted revisions relate to Idaho's open burning and crop residue disposal requirements and establish a streamlined permitting process for spot burns, baled agricultural residue burns, and propane flaming. The submitted revisions also make minor changes to the existing crop residue disposal rules to update cross references and clarify certain administrative information. This action is being taken under the Clean Air Act (the Act or CAA).

DATES: Written comments must be received on or before **INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R10-OAR-2011-0640, by one of the following methods:

- A. www.regulations.gov. Follow the on-line instructions for submitting comments.
- B. Mail: Donna Deneen, EPA, Office of Air, Waste, and Toxics (AWT-107), 1200 Sixth

Avenue, Suite 900, Seattle, Washington 98101

C. Hand Delivery: EPA, Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Donna Deneen, Office of Air Waste, and Toxics (AWT-107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

D. E-mail: R10-Public_Comments@epa.gov

Instructions: Direct your comments to Docket ID No. EPA-R10-OAR-2011-0640. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, (206) 553-6706, or by e-mail at deneen.donna@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean the EPA. Information is organized as follows:

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I. Background

Idaho’s federally-approved rules at Idaho Administrative Procedures Act (IDAPA) 58.01.01.617 through 623 contain the open burning requirements for crop residue disposal in Idaho. These rules were approved by the EPA on August 1, 2008, (73 FR 44915) and were

submitted to the EPA as a result of the Ninth Circuit Court of Appeals decision in Safe Air for Everyone v. USEPA, 475 F.3d 1096, amended 488 F.3d 1088 (9th Cir 2007). More information regarding the Ninth Circuit Court of Appeals decision and the federally-approved requirements for crop residue disposal can be found in the EPA's proposed and final actions on the state's 2008 SIP submittal. 73 FR 23155 (April 29, 2008) and 73 FR 44915 (August 1, 2008).

Idaho's federally-approved crop residue disposal rules at IDAPA 58.01.01.617 currently provide that the open burning of crop residue on fields where the crops were grown is an allowable form of open burning if conducted in accordance with the provisions at IDAPA 58.01.01.618 through 623. The provisions at IDAPA 58.01.01.618 through 623 are described in the EPA's proposed action at 73 FR 23159 (April 29, 2008). In brief, these rules require that a person desiring to burn crop residue must register at least thirty days in advance of the date of the proposed burn, pay a fee at least seven days prior to the burn, contact the IDEQ for initial approval at least 12 hours prior to the burn, obtain final approval from the IDEQ the morning of the burn, and submit a post-burn report to the IDEQ. In addition, all persons intending to dispose of crop residue through burning must abide by all of the general provisions in IDAPA 58.01.01.622 (covering such items as training requirements, reporting requirements, and certain limitations on burning).

The criteria for the IDEQ to approve a request to burn are described in IDAPA 58.01.01.621. Importantly, before approving a permittee's request to burn, the IDEQ must determine that ambient air quality levels do not exceed seventy-five percent of the level of any National Ambient Air Quality Standards (NAAQS) on any day and are not projected to exceed such level over the next 24 hours. In addition, the IDEQ must determine that ambient air quality

levels have not reached, and are not forecasted to reach and persist at, eighty percent of the one-hour action criteria for particulate matter under IDAPA 58.01.01.556.¹ Thus, the IDEQ will not approve a burn if these levels are expected to be exceeded as a result of the burn. In determining whether to approve the burn, the IDEQ must also consider the expected emissions from the proposed burn, the proximity of the proposed burn to other burns, the moisture content of the fuels, the acreage, crop type and other fuel characteristics, existing and expected meteorological conditions, the proximity of the proposed burn to institutions with sensitive populations, public roadways, and airports, and other relevant factors. IDAPA 58.01.01.621.01. The IDEQ must also notify the public as provided in IDAPA 58.01.01.623.

The IDEQ's SIP revision submitted on July 13, 2011, contains changes to the federally-approved crop residue disposal rules at IDAPA 58.01.01.617 through 623. More specifically, the July 13, 2011, SIP submittal revises IDAPA 58.01.01.617, 618, 620, 622, and 623, and adds a new section at IDAPA 58.01.01.624. These revisions were submitted by the IDEQ after determining that the administrative requirements under the existing rules for certain types of small burns (spot burns, broken bale burns and propane flaming) were unnecessarily burdensome. According to the July 13, 2011, SIP submittal, these revisions were made to streamline the administrative requirements for these types of small fuel loading and small acreage burns.

In the July 13, 2011, submittal, the IDEQ described the process for making the rule changes and noted that the changes were drafted in conjunction with a negotiating committee

¹ The current one-hour action criteria under IDAPA 58.01.01.556 is an average of 80 ug/m³ for PM_{2.5} and an average of 385 ug/m³ for PM₁₀.

made up of persons having an interest in the development of this rule.² Participants included growers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, the Idaho State Department of Agriculture, tribes, public officials, and members of the public who have an interest in the regulation of air emissions. The IDEQ also explained that a change to the statute was necessary relating to the fee requirement for propane flaming. The resulting temporary rule was adopted by the IDEQ Board of Environmental Quality on April 25, 2011 and became effective on July 1, 2011.

II. Summary of Rule Changes

The rule changes in the July 13, 2011, submittal include new IDAPA 58.01.01.624, which relates to spot burns, baled agricultural residue burns and propane flaming, and revisions to IDAPA 58.01.01.617 through 623, which clarify existing disposal of crop residue provisions and update references to new IDAPA 58.01.01.624. The EPA prepared a Technical Support Document (TSD) with detailed description of the specific provisions in the SIP submittal. The TSD is available for review as part of the docket for this action.

Spot burns and baled agricultural residue burns

The new provisions for spot burns and baled agricultural residue burns in IDAPA 58.01.01.624 streamline the procedure and provide for the issuance of an annual permit to cover spot burns and baled agricultural residue burns proposed by an applicant for a given calendar year. Under the prior rule, a separate approval was required for each and every individual spot or bale burn. The new rule still regulates these types of burns but simplifies the administrative

² Idaho's negotiated rulemaking process is an informal process open to the public and intended to improve the substance of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rule-making; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. See Section 67-5220, Idaho Code and IDAPA 04.11.01.810

process. Specifically, under the new rule, to apply for an annual permit to conduct spot burning and baled agricultural residue burning, the applicant must provide registration information identifying the proposed burn areas and submit a fee. The permit issued by the IDEQ is valid for the calendar year in which it is issued, covers the proposed burn areas provided in the applicant's registration information, and is good for a cumulative total of no more than one acre per day and no more than ten acres per year. The person intending to burn must meet all applicable permit provisions, including provisions relating to preventing travel hazards, protecting sensitive populations, and recordkeeping. Under IDAPA 58.01.01.624.04.c, spot burns and baled agricultural residue burns may not be conducted except on IDEQ-designated burn days, which for these types of burns may include weekends and holidays.

Propane flaming

The new provisions for propane flaming in IDAPA 58.01.01.624 provide that a person intending to conduct propane flaming is deemed to have a permit if the definition of propane flaming is met and the person complies with all applicable provisions. Under the prior rule, a separate approval was required for each and every burn using propane flaming. The new rule still regulates propane flaming but simplifies the administrative process by deeming persons conducting propane flaming to have a permit by rule if they comply with applicable provisions in IDAPA 624.04 and 624.05. The applicable provisions include general crop residue disposal provisions and provisions relating to preventing travel hazards, protecting sensitive populations, and recordkeeping. Under IDAPA 58.01.01.624.04.c, propane flaming may not be conducted except on IDEQ-designated burn days, which for propane flaming may include weekends and

holidays.

Revisions to IDAPA 58.01.01.117 through 623

The revisions to IDAPA 58.01.01.117 through 623 consist of minor changes that update cross references to new IDAPA 58.01.01.624 and clarify certain administrative provisions.

III. Evaluation of Rule Changes

The crop residue disposal provisions in the federally-approved SIP for Idaho may be revised provided the State meets the requirements of CAA section 110. To address section 110, the EPA reviewed each changed provision in the crop residue disposal rules in its July 13, 2011, submittal to determine whether or not the changes would interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of this Act. As further discussed in the TSD, the changes to existing IDAPA 58.01.01.117 to 623 consisted of minor changes, such as updated cross references and clarifying administrative information (e.g, specifying the website address and toll free number). Because of the nature of these revisions, these changes do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act.

The new provisions at IDAPA 58.01.01.624 that simplify the administrative process for spot burns, baled agricultural residue burns, and propane flaming also do not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act. Spot burning, baled agricultural residue burning, and propane flaming are already allowed under the existing federally-approved crop residue disposal rule and burning continues to be allowed only

on IDEQ-designated burn days. Moreover, the permittee is still subject to the applicable general provisions for the burning of crop residue. See the TSD for more information about our review and analysis of the July 13, 2011, SIP submittal.

Based on the EPA's review and evaluation of the July 13, 2011, SIP submittal, the burn determination provisions in IDAPA 58.01.01.621, and the IDEQ's analysis of its rule changes in the July 13, 2011, SIP submittal, the EPA concludes that Idaho's SIP revision submitted on July 13, 2011, meets the requirements of Clean Air Act section 110.

IV. Proposed Action

Consistent with the discussion above and based on our review and analysis of revised IDAPA 58.01.01.617, 618, 620, 622, and 623 and new section IDAPA 58.01.01.624, the EPA proposes approval of the revisions in Idaho's July 13, 2011, SIP submittal.

V. Scope of Proposed Action

Idaho has not demonstrated authority to implement and enforce IDAPA Chapter 58 within "Indian Country" as defined in 18 U.S.C. 1151.³ Therefore, the EPA proposes that this SIP approval not extend to "Indian Country" in Idaho. See CAA sections 110(a)(2)(A) (SIP

³"Indian country" is defined under 18 U.S.C. 1151 as: (1) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (2) all dependent Indian communities within the borders of the United States, whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (3) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. Under this definition, EPA treats as reservations trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. In Idaho, Indian country includes, but is not limited to, the Coeur d'Alene Reservation, the Duck Valley Reservation, the Reservation of the Kootenai Tribe, the Fort Hall Indian Reservation, and the Nez Perce Reservation as described in the 1863 Nez Perce Treaty.

shall include enforceable emission limits), 110(a)(2)(E)(i) (State must have adequate authority under State law to carry out SIP), and 172(c)(6) (nonattainment SIPs shall include enforceable emission limits). This is consistent with the EPA's previous approval of Idaho's PSD program, in which the EPA specifically disapproved the program for sources within Indian Reservations in Idaho because the State had not shown it had authority to regulate such sources. See 40 CFR 52.683(b). It is also consistent with the EPA's approval of Idaho's title V air operating permits program. See 61 FR 64622, 64623 (December 6, 1996) (interim approval does not extend to Indian Country); 66 FR 50574, 50575 (October 4, 2001) (full approval does not extend to Indian Country).

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 3, 2013

Dennis J. McLerran
Regional Administrator
Region 10.

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